

SUPPLEMENTAL AGREEMENT

This Agreement, entered into by and between **GIBSON COUNTY, INDIANA**, by and through its Board of Commissioners (hereafter the "County") and **BLACK BEAUTY COAL COMPANY, LLC** (hereafter "Black Beauty")

WITNESSETH:

WHEREAS, Black Beauty and the County are parties to certain agreements for road crossings and/or road closings related to the transporting of coal, materials and/or equipment over and across and/or conducting mining operations in, under or through certain Gibson County roadways with respect to the mine operations described below (collectively, the "Existing Road Agreements"); and

WHEREAS, the Existing Road Agreements apply to mining operations of Black Beauty or its affiliated contract miner, United Minerals Company, LLC ("United") commonly known as the Francisco Mine operated by Black Beauty, the Somerville North Mine operated by United, the Somerville Central Mine operated by Black Beauty, and the Somerville South Mine operated by United; and

WHEREAS, Black Beauty and the County desire to supplement and amend the Existing Road Agreements to confirm, clarify or otherwise set forth applicable terms for the maintenance and repair of applicable roadways while the same are subject to one of the Existing Road Agreements;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

Section 1. Supplemental and Clarifying Agreements. The parties acknowledge that further clarification of each party's responsibilities with regards to the maintenance of crossings and/or roads which have been mined through and subsequently reclaimed under the Existing Agreement is necessary. The clarifications are as follows:

- A. **Contact Number(s).** Black Beauty shall provide the County, via the Gibson County Highway Superintendent, a phone number or multiple numbers that can be utilized by the Gibson County Highway Superintendent or one of the Gibson County Commissioners to contact each operation in the event there are perceived maintenance problems with temporary crossings and or reclaimed mine-through roads. Said contact numbers are to remain confidential and are to be utilized exclusively for the purpose intended and the County agrees that they shall not, for any reason, release said numbers to anyone outside of the Gibson County Highway Superintendent and/or the Gibson County Commissioners without the written consent of Black Beauty and, as applicable, United.

- B. **Remediation of Problems.** After observing the problem firsthand, a County representative may report a problem with a coal mine crossing to the appropriate Coal Mine at the number as determined in paragraph A. of this document. Upon notification by the County to Black Beauty or United, as applicable, of a perceived problem with a temporary crossing, a representative of the County and a representative of Black Beauty or United, dependent upon the location of the problem, shall meet as soon as is reasonably possible at the location. A reasonable plan of remediation to correct the problem will be implemented promptly. Both the representative of the County and the representative of Black Beauty or United, as applicable, shall fill out and sign an incident form (hereinafter "**iform**"), attached hereto as "**EXHIBIT A**", that provides details of the problem, remediation actions required and number of occurrences for the individual crossing for which the action is being undertaken. If within any 12 month period any individual crossing has been deemed to have been unacceptable to the County due to a maintenance/ construction problem for a third instance, and for which an iform has been filled out, an automatic closing of the crossing shall occur until the County is satisfied that an acceptable solution has been provided. For all situations related exclusively to clearing/ cleaning of crossings, Black Beauty or United, as applicable, shall be allowed a maximum of 3 hours from the time in which the confirmation of a problem occurs to correct the problem to the reasonable satisfaction of the County. If the crossing problem is not corrected to the reasonable satisfaction of the County within the allotted 3 hour timeframe, the County shall have the right to temporarily close the crossing until such corrective measures have been completed to the satisfaction of the County.
- C. **Additional Rock.** If the County notifies Black Beauty and/ or United of the need for additional stone/ rock to be placed on reconstructed roadways that have been mined through or which are being utilized as coal hauling routes or on temporary road crossings, Black Beauty and/ or United shall initiate the application of the agreed upon type and volume of aggregate materials within 24 hours of said notification unless a mutually agreed upon reasonable alternative timeframe is in order due to uncontrollable circumstances such as, but not limited to, aggregate vendor unavailability due to closure in observance of nationally recognized holidays, weekends and/ or nights. If the application of the requested material has not been initiated within the 24 hour period, the County has the right to apply the material and charge Black Beauty and/ or United one and one-half times the County's cost of the material.
- D. **Drainage.** All existing crossings subject to an Existing Agreement shall be inspected by Black Beauty and/ or United and a representative of the County (at their choosing) within 15 calendar days of execution of this agreement to determine if the amount of mine road surface drainage that is flowing towards or standing on the county road being crossed has been minimized to the extent reasonably possible. If the County determines that additional measures to minimize such conditions are required, the measures shall be implemented within

45 calendar days of execution of this agreement so as to prevent to the extent possible future problems.

Section 2. Scope of Agreement. This Supplemental Agreement does not alter or amend any of the other covenants and terms of the Existing Agreements not specifically addressed herein, all of which shall remain in full force and effect; provided that if any term hereof shall conflict with any term of an Existing Agreement, the terms hereof shall prevail. The terms of this Supplemental Agreement may be further modified only by the written consent of both parties.

Section 3. Authority to Execute Agreement. Black Beauty herein represents and warrants that the person designated below is a duly appointed officer of Black Beauty and is fully empowered to execute this Agreement for and on behalf of Black Beauty pursuant to the document by which Black Beauty is established.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals, this the 20th day of January, 2009.

**BOARD OF COMMISSIONERS
OF GIBSON COUNTY, INDIANA**

Robert D. Townsend
Robert D. Townsend

Don L. Whitehead
Don L. Whitehead

Gerald L. Bledsoe
Gerald Bledsoe

BLACK BEAUTY COAL COMPANY, LLC

BY: Charles A. Burggraf
Authorized Officer

PRINTED: Charles A. Burggraf

TITLE: President

ATTEST

Mary Stacy
Gibson County Auditor

"EXHIBIT A"

THIS FORM IS TO BE FILLED OUT AND SIGNED BY THE PARTIES INVOLVED UPON THOSE TIMES WHEN THE COUNTY HAS DETERMINED THAT THERE EXISTS AN UNSATISFACTORY CONDITION REGARDING MAINTENCE/ CONSTRUCTION OF A CROSSING BEING UTILIZED BY THE MINING COMPANY SIGNING HEREAFTER FOR THE PURPOSE OF TRANSPORTING OVERWEIGHT AND OVERSIZED HEAVY EQUIPMENT AND/ OR COMMODITIES OVER, UPON AND ACROSS GIBSON COUNTY PUBLIC ROADWAYS. IT IS UNDERSTOOD THAT THE PARTIES HAVE DISCUSSED THE PROBLEM AND A REMEDIAL ACTION TO CORRECT THE PROBLEM(INCLUDING TIMEFRAME TO CORRECT) HAS BEEN ESTABLISHED.

DATE: _____

TIME(CDT): _____

MINE NAME: _____

OPERATING COMPANY: _____

LOCATION OF CROSSING(include nearest county road intersection): _____

NATURE OF PROBLEM: _____

REMEDIAL ACTION/S REQUIRED: _____

OCCURRENCE NUMER FOR THE REFERENCED CROSSING: _____

AUTHORIZED REPRESENTATIVES IN ATTENDANCE:

"MINING COMPANY"

"COUNTY"

BY: _____

BY: _____